

VERNIE E. FOX)
 Claimant)
 VS.)
) Docket No. 258,962
 FOX’S ENTERPRISES/FOX’S USED CARS)
 Respondent)
 AND)
))
 AMERICAN INTERSTATE INSURANCE)
 Insurance Carrier)

Claimant appeals the December 12, 2003 post-award medical Award of Administrative Law Judge Bryce D. Benedict. Claimant was denied benefits in the form of requested medical treatment for his right knee from an injury suffered on August 1, 2000. Claimant contends his right knee symptoms and the need for treatment occurred as a result of a serious injury suffered by claimant on that date, when he was run over by a water truck. Respondent contends that claimant has failed to prove the injuries to the right knee were related to the accident of August 1, 2000, as claimant failed to request medical treatment for the right knee during the three years that claimant continued in his employment with respondent prior to his September 1, 2003 retirement.

Claimant raises the following issues for review from the Administrative Law Judge's Award:

- “A. Whether the right knee complaints are related to the original injury, where the claimant was injured when both legs were run over by a large truck, and where the treating physician is of the opinion that the current right knee complaints are the result of that serious and life-threatening accident.

“B. Payment of medical bills related to the right knee injury.

“C. Future medical for the right knee injury.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board (Board) finds based upon a review of the entire record, that claimant's request for ongoing medical care for his right knee should be denied and the post-award medical Award of the Administrative Law Judge should be affirmed.

Claimant, the owner of respondent, drove trucks to various work sites. While at a work site on August 1, 2000, he was run over by a water truck, suffering fractures to his left proximal fibula, right distal fibula, right third metatarsal, right second toe and the left clavicle. None of these fractures required surgery and all have united without complication. Claimant acknowledged at that time that there was no direct trauma to his right knee.

Claimant settled this matter at a settlement hearing conducted by the Workers Compensation Division on September 12, 2002, leaving medical treatment open for future determination.

Claimant was treated by orthopedic surgeon Craig L. Vosburgh, M.D., from August of 2000 through July 25, 2001. At no time during the multiple visits did claimant complain to Dr. Vosburgh about right knee symptoms. In his August 17, 2001 letter to claimant's attorney, Dr. Vosburgh failed to mention any right knee involvement from the August 2000 accident. When Dr. Vosburgh rated claimant in the August 17, 2001 letter, he provided no rating for claimant's right knee. An accident report, filled out by claimant's wife at the time of the accident, failed to mention any right knee involvement.

Claimant was examined at his attorney's request by Peter V. Bieri, M.D., board certified independent medical examiner in the American Academy of Disability Evaluating Physicians, on November 26, 2001. Dr. Bieri also failed to note any problems with or provide any impairment rating for the right knee.

Claimant returned to his regular duties with respondent, although claimant testified to a self-limitation of his duties until approximately six months after the accident. He continued working until September 1, 2003, when he retired from the company.

At the time of claimant's retirement, he was under treatment with Daniel J. Shead, D.P.M., who had been treating him since 1983 for diabetes. Claimant has been

insulin dependent since 1987. According to the records, claimant's retirement was directly related to his ongoing diabetes difficulties.

Claimant began experiencing problems with his right knee in November 2002, approximately two months before being seen by Dr. Vosburgh on January 16, 2003. Claimant testified that his knee gave out while stepping backwards in November of 2002. An MRI was performed In March 2003, which was negative except for a degenerative signal in the menisci.

Claimant was examined by Sergio Delgado, M.D., at respondent's request, on October 8, 2003. Dr. Delgado opined claimant's right knee symptoms were caused by chondromalacia of the patellafemoral joint of the right knee. Dr. Delgado stated that if these symptoms had been related to the August 1, 2000 accident, claimant would have had initial and persistent right knee complaints. He concluded that claimant's knee symptoms were not related to the August 1, 2000 accident.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹ In this instance, the medical reports contemporaneous with claimant's August 1, 2000 injury fail to mention any right knee involvement. The accident report prepared by claimant's wife also fails to mention any right knee involvement. Additionally, the medical examination of claimant by Dr. Bieri also failed to uncover any right knee involvement.

The Board finds based upon a preponderance of the credible evidence that claimant has failed to prove his right knee complaints are related to the injury of August 1, 2000. Therefore, the post-award medical Award of the Administrative Law Judge denying claimant benefits for the right knee should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the post-award medical Award of Administrative Law Judge Bryce D. Benedict dated December 12, 2003, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

¹ K.S.A. 44-501 and K.S.A. 44-508(g).

Dated this ____ day of March 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Paul D. Post, Attorney for Claimant
Kevin J. Kruse, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director